

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

2003P01010WOUS

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Signature _____

Typed or printed name _____

Application Number

10/581,531

Filed

02/16/2007

First Named Inventor

Martin Stickel

Art Unit

3742

Examiner

Thor S. Campbell

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s)

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Andre Pallapies/

Signature

☐ assignee of record of the entire interest.

Andre Pallapies

Typed or printed name

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☐ attorney or agent of record.

252-639-7644

Telephone number

Registration number _____

☒ attorney or agent acting under 37 CFR 1.34.

January 16, 2012

Date

Registration number if acting under 37 CFR 1.34 62.246

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required. see below

☐ *Total of _____ forms are submitted.

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**STATEMENT OF ARGUMENTS
FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Dear Sir:

Applicants submit this Statement of Arguments in support of its Pre-Appeal Brief Request for Review and Notice of Appeal filed herewith.

Overview

Claims 22-52 are pending in this application.

In the Office Action dated October 26, 2011, claims 22 and 46 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 941,215 to Wade ("Wade"); claims 32 and 39 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 3,710,985 to Baum ("Baum"); claims 23-28, 30, 31, 33 and 40-45 were rejected under 35 U.S.C. §103(a) over Wade in view of U.S. Patent Application Publication No. US 2004/0074893 to Wermbter et al. ("Wermbter"); claim 40 was rejected under 35 U.S.C. §103(a) over Wade; claims 43 and 44 were rejected under 35 U.S.C. §103(a) over Baum in view of Wermbter; claims 34-38 and 49 were allowed; and claims 29, 47, 48 and 50-52 were objected to as being dependent upon a rejected base claim. These rejections should be withdrawn for at least the following reasons.

A. General Comments

Applicant submits (again) that the previous Office Actions (dated December 30, 2009; June 25, 2010; and February 17, 2011) were not in compliance with 37 CFR 1.104(c)(2) for at least the reason that these previous Office Actions merely copied the claim language and inserted a few reference numbers. They provided an insufficient amount of explanation regarding the application of the applied references to the claim features. (Amendment B, page 15; Response C, pages 2 and 3). Further, the previous Office Actions did not address the proper claim language. Amendments made in the previous Office Actions were not addressed.

The Office Action repeats the same deficient format as the previous Office Actions and is similarly not in compliance with 37 CFR 1.104(e)(2). In addition, the Office Action does not address the proper claim language. Amendments made in Amendment B dated March 29, 2010, are not addressed (Statement of Argument filed September 16, 2010; Response C, pages 2-3).

Applicant has requested several times in this Application that a proper Office Action be issued that addresses the correct claim language and provides the required level of explanation as to how the applied references disclose or suggest the claimed features. It is impossible for Applicant to prepare a meaningful response until Examiner Campbell provides a properly prepared Office Action. Applicant has endured significant needless delay and significant needless expense because Examiner Campbell has not complied with 37 CFR 1.104(C)(2). One only needs to review the prosecution history in this Application to get a very clear picture of Examiner Campbell's repeated failure to provide a meaningful examination of this Application. If this Application is not allowed in response to this Request, Applicant requests that Examiner Campbell's Supervisor review any subsequent office action to ensure that it complies with the Rules (including that it addresses the proper claim language). If the result of this Request is merely to instruct Examiner Campbell to issue yet another office action, Applicant requests that the Appeal be allowed to continue to the Appeals Board.

B. New Matter

The Office Action objects to Amendment B based on the assertion that it introduces new matter (OA, page 2). Amendment B (page 13) and Response C (page 2) directed attention to Fig. 4 that clearly shows the features of claim 46. Also, the specification section that refers to Fig. 4 (the paragraph that bridges pages 10 and 11) clearly discloses the channel bottom 22 of the connecting element not crossing a plane that intersects and is parallel to central area 4. The distance "d" in Fig. 4 shows that channel bottom 22 (aligning with the upper horizontal line defining distance "d") does not cross the described plane (aligning with the lower horizontal line defining distance

"d").

C. Claims 22 and 46

Wade does not disclose a heating device adapted for mounting in a heater, as required by claim 22 (Amendment B, page 16). Claim 46 depends from claim 22.

Further, The Office Action's rejection of claim 46 provides no explanation of how the Office Action defined connecting element (passage 20) of Wade is adapted to connect to a corresponding feature of a continuous flow heater, as required by claim 46. The entire structure of Wade is a water heater. Wade does not disclose passage 20 being adapted to connect to a heater.

D. Claims 32 and 39

The claim language presented in the Office Action is again incorrect for claims 32 and 39. This error was pointed out in Response C, but Examiner Campbell has not corrected the error and again addresses incorrect claim language. Any attempt to respond to this rejection would involve guessing on the part of Applicant as to what features Examiner Campbell is trying to reject and how he is applying Baum.

E. Claims 23-28, 30, 31, 33 and 40-45

The claim language presented in the Office Action is again incorrect for claims 23, 27, 31, 41, 42 and 45. This error was pointed out in Response C, but Examiner Campbell has not corrected the error and again addresses incorrect claim language. Any attempt to respond to this rejection would involve guessing on the part of Applicant as to what features Examiner Campbell is trying to reject and how he is applying Wade and Wernbter. However, Applicant responded to the rejection (as Applicant understood it) in Amendment B (page 17-19).

F. Claim 40

Claim 40 depends from claim 39. As noted above, the claim language presented in the Office Action is incorrect for claim 39.

G. Claims 43 and 44

Claim 43 depends from claim 32. As noted above, the claim language presented in the Office Action is incorrect for claim 32.

Claim 44 depends from claim 39. As noted above, the claim language presented in the Office Action is incorrect for claim 39.

CONCLUSION

In view of the above, Applicant requests allowance of claims 22-52.